Supreme Court, U.S.
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No. ____

In the

# Supreme Court of the United States

MARIAN K. AGNEW,

*Petitioner,*

v.

THE SUSSEX CONDOMINIUM UNIT OWNERS ASSOCIATION,

*Respondent,*

**On Petition for a Writ of Certiorari To the Supreme Court of the State of Virginia**

## PETITION FOR A WRIT OF CERTIORARI

Marian K. Agnew
The Gloucester Apartments
1820 Park Avenue, Apt. 2
Richmond, Virginia 23220
(804) 359-8248

## QUESTIONS PRESENTED

This case suggests that adverse possession, empowered by its Statutes of Limitation,[1] permitted the unconstitutional taking of Mrs. Agnew's property when it mechanically conveyed her property to a neighbor without the due process and equal protection from state action guaranteed by the U. S. Constitution to "insure domestic tranquility."

I. This Case Presents a perfect storm of fact and law to adjudicate whether state Statutes enabling adverse possession deprive citizens of 14th Amendment procedural due process protecting their property from unconstitutional state action.

II. The question of Federal law before this Court is whether the ancient possessory ownership doctrine of adverse possession must be declared unconstitutional because taking property without either procedural or substantive due process contravenes both the Bill of Rights and the Fourteenth Amendment and there are less drastic means for resolving property disputes.

III. When the Virginia Supreme Court endorsed the Circuit Court's interim summary judgment, holding that adverse possession by mistake and fraud was grounds for adverse possession, did it substantially depart from both established Virginia case law, and fail to respect the Virginia Rule 3.20,[2] when there were material facts genuinely in dispute.



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[1] Hereinafter "Statutes."

[2] VSCR Rule 3.20. "Summary judgment shall not be entered if any material fact is genuinely in dispute."

## PARTIES TO THE PROCEEDINGS

The named Petitioner is MARIAN K. AGNEW, who retired from her Northern Virginia law practice in 1999, moved to Richmond and in 2001 purchased the Gloucester Apartments at 1818/1820 Park Avenue to renovate for her retirement home. Her property abuts that of:

The named Respondent, the SUSSEX CONDOMINIUM UNIT OWNER'S ASSOCIATION, 1814/1816 Park Avenue, ("Sussex") is an unincorporated association created for the purpose of bringing this action whose unlisted members are:

First floor (direct access to the garden):

Unit 1 - opposing counsel for Respondent, Senior Partner, largest Richmond law firm, ex Virginia Attorney General,

Unit 2 - Jeffery J. Rawn, Sussex condominium developer, builder of the Brick Wall located between the Gloucester and Sussex properties, and Barbara J. Rawn.;

Second and third floors (no direct garden access):

Unit 3 - Samuel Lee Parker, President of the Sussex Assn and signer of the Attested Complaint and Debra C. Parker;

Unit 4 - Elise W. Haskell;

Unit 5 - Lora E. Spiller, Secretary, Treasurer

Unit 6 - Robert L. and Jay Kaye Treganza.

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# PETITION FOR A WRIT OF CERTIORARI

## OPINIONS BELOW

The opinion of the highest state court to review the merits, the Virginia Supreme Court, appears at Appendix p. 2, and is unpublished. The date on which the Virginia Supreme Court decided my case was September 9, 2010. A copy of that decision appears at Appendix p. 3. A timely petition for rehearing was thereafter denied on November 15, 2010 and a copy of the Order denying rehearing appears at Appendix p. 2.

An extension of time to file the petition for a writ of certiorari was granted to and including April 14, 2011, on January 20, 2011 in Application No. 10A717.

The following opinions and Orders of the Richmond Circuit Court appear in the Appendix and are unpublished:

Letter Opinion, October 21, 2009, Appendix p. 4
Interim Order, November 12, 2009, Appendix p. 8
Final Order, February 3, 2010, Appendix p. 10
Letter Opinion denying Rehearing, February 2, 2010, Appendix p. 12.

## JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

This Court's jurisdiction is invoked under 28 U.S.C. §2403(b) and shall be served on the Attorney General of Virginia.

## STATUTES AND REGULATIONS INVOLVED

Both substantive and procedural due process, the principles mandating that government respect all legal rights owed to a person, originated in England's *Magna Carta,* John 1 (1225). The right to private possession of land also originated in England when the *Statutes of Westminister,* Edw. 1 (1275) *et seq.,* were enacted fifty years later. They are the seminal law, the contracts between government and its citizens that were incorporated into the 14th Amendment of the U.S. Constitution:

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the Unites States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Fourteenth Amendment directly conflicts with Virginia Code § 8.01-236, the Statute of Limitations for adverse possession, that deprived Mrs. Agnew of her property without due process and equal protection. It states in pertinent part:

> "No person shall make an entry on, or bring an action to recover, any land unless within fifteen years next after the time at which the right to make such entry or bring such action shall have first accrued to such person or to some other person through whom he claims. . . ."

The Circuit Court abused its discretion under VSCR Rule 3.20 (summary judgment) by ruling that there were no material facts in dispute after it declined to hear Mrs. Agnew's factual evidence.

## STATEMENT

The petitioner and owner of the Gloucester Apartments, Marian K. Agnew,[1] was found guilty of trespass after the Circuit Court summarily ruled without hearing her proffered defense, evidence of permissive use, that operation of the fifteen year Virginia Statute of Limitations had adversely transferred permanent possession of her property, fenced by a large Brick Wall, to that of Respondent, Sussex Condominium Unit Owners Association,[2] eight years before she purchased it. The Court awarded the Sussex damages to replace a section of the Wall she had removed to enlarge her garden.

### A. Background: Sussex Condominium developer, Jeffery Rawn, admitted that he built the Brick Wall on the Bass/Agnew property with Walter Bass' permission in 1978.

After Mrs. Agnew purchased the Gloucester Apartments in 2001, she noticed Lee Parker,[3] President, Sussex Condominium Assn., Inc.,[4] that the huge Brick Wall [5]separating their gardens, but located on her property, would eventually have to be removed. She gave the Sussex temporary permission to use her property and urged amicable resolution of the boundary issue.

Parker solicited explanations from both former property owners, Jeffery Rawn[6] and Walter Bass,[7]

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[1] hereafter, "Mrs. Agnew "
[2] hereafter, "Sussex "
[3] hereafter, "Parker."
[4] Sussex Inc corporate registration ended in 2005
[5] The Wall is 44 ft long, 6 1/2 feet high, its pillars are 13"square It added about 125 square feet of her property to the Sussex garden
[6] hereafter, "Rawn." He had moved to Chicago, Ill in 2000

and consulted an attorney, who evidently advised that the Sussex had taken Agnew's property by adverse possession since the Wall was built in 1978.[8] He responded, attaching a letter[9] from Rawn, the Sussex condominium developer who built the Wall, describing how he and Bass, had jointly planned and paid for the Wall and had it built without a survey of the property line:

> "the property line was the location of a decaying and unattractive fence that determined the back (north) and west side boundaries. I approached [the Basses] to enlist their cooperation, guidance and support regarding the Wall which would continue to be the mutual boundary." They agreed to share the cost, (50/50). "We also, jointly and mutually, decided to place the wall exactly where the former wooden fence was. Neither of us felt that a survey was necessary (emphasis added) since the wooden fence appeared to be the property line."

A month later, Bass wrote to Parker:[10]

> "I owned 1818-1820 Park Avenue, Richmond, Virginia during the 70's through the '90s. In the late 70s, Jeff Rawn, a next door neighbor, informed me that he had planned to build a brick wall between our properties. The wall was to be built between the Sussex and the Gloucester Apartment buildings. Jeff Rawn asked if I would be willing to pay half of the cost. I did, which was the neighborly thing to do."

[7] Hereafter, "Bass," Agnew's predecessor, former Gloucester Apts. owner,

[8] Parker letter to Agnew, 11/8/02 App. p 13.

[9] Rawn letter to Parker, 10/29/02 App p 15
The content of Rawn's Letter is not attested His signature is notarized

[10] Memo, Bass to Parker 12/6/02 App. p.17

Rawn's February Memo [11] repeats, "We simply agreed to build the wall where we built it, without having the line surveyed." (emphasis added)." "Walter Bass and I never entered into any easement agreement verbal or otherwise."

In February, 2003, Parker wrote that his attorney advised that "the Association had acquired fee title to the disputed strip of land in 1993 under the doctrine of adverse possession," because Rawn had not intended to claim Bass' property as his own."[12] From this time on, the Sussex claimed that Rawn's Wall construction on Bass' property was a mistake.

**B. Agnew tried unsuccessfully for six years to settle the boundary dispute before she demolished part of the wall in June, 2008, to make her garden.**

While Mrs. Agnew was preoccupied with apartment renovations, the Sussex tenants had contacted at least four attorneys but failed to find one to take their case.[13] They continued to seek counsel. Attorney, Cosby emailed the tenants, "I will say - if I were the judge, I'd throw this case out. (why not ask Webb or Stutts)"[14]

Rawn returned to his Unit No. 2 apartment from Chicago in 2005 and was assigned the task of negotiating with Mrs. Agnew. They consulted City zoning officials. Rawn had violated the City zoning law when he built the Wall. Therefore, selling it to

[11] Email, Rawn to Parker, 2/14/03 App p 17

[12] quoting *Hollander v. World Mission Church*, 255 Va. 440, 442, 498 S.E.2d 419, 421 (1998), a mistaken boundary case[12]

[13] Stutts, Cosby, Webb, Taylor, Sussex email traffic is in the Record.

[14] Id. email Spiller to Cosby, 4/16/08

the Sussex was not an option because lot sizes could not be changed. Rawn considered exchanging reciprocal easements. When Agnew offered to draft the deeds, the Sussex tenants demurred. [15]

When Rawn seemed open to the reciprocal easement solution, in Spring, 2008, Mrs. Agnew obtained a City Demolition Permit and notified him that she intended to remove the rear section of the Wall for her garden. He did not respond. Instead, he obtained an independent survey. It showed that both the location of the Brick Wall and property line depicted on Mrs. Agnew's Plat, were correct. By June, 2008, she had heard nothing more about adverse possession and presumed that the Sussex had agreed to settle. When time had come to plant her garden, Mrs. Agnew then had part of the rear section[16] of the Brick Wall demolished, replacing it with a high steel trellis fence on the real property line. In July, 2008, Rawn told her that the deal was off - that the tenants had refused to cooperate.

**C. A month later, opposing counsel purchased persistently vacant Sussex Unit No. 1 for 40% less than its assessment. Three months later, he had an associate bring this case against Agnew for adverse possession and trespass, claiming that Rawn had mistaken the location the property line.**

Rawn did not mention the fact that an old friend, prominent attorney and former tenant, had repurchased Unit No.1, the first-floor apartment adjacent to his that had been vacant for more than a

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[15] Id email, Haskell to Parker, 4/28/08

[16] About 4'x16', enough to make a three 4-square gardens

year. [17] Disclosure of litigation required by its Certificate of Resale had evidently intimidated prospective purchasers. In early September, 2008, Mrs. Agnew discovered his name on the Sussex email circulation list and contacted him. She also investigated his impressive credentials: senior partner, experienced tobacco trust litigator and former Virginia Attorney General. Hoping that Rawn would finally get persuasive legal advice to settle the Wall matter, she invited him to discuss the matter. He was genial, very intimidating and clearly not interested in resolving the matter.

He advised that she needed an attorney because she had demolished Sussex property and an unpleasant adverse possession action was a possibility. Referring to his twenty-year experience in the Virginia court, he volunteered his opinion that a 2004 Alexandria, Va. boundary dispute case involving a walkway between two townhouses, *Quatannens v, Tyrrell*, [18] was on point, that the location of the Wall was Rawn's mistake. Therefore, by law both the Brick Wall and her fenced property belonged to the Sussex.

Surprised, Mrs. Agnew replied[19] that the classic adverse possession defense was permissive use and that the Wall admittedly had been built with permission from both former owners. She advised that he ask Parker for their earlier correspondence and later gave him copies of her survey. She also gave him a complete file of her correspondence with the Sussex tenants, trying to settle the matter out of

[17] App. p 40 - Unit No.1, Richmond City Tax Records, admitted into evidence 01/18/11.

[18] *Quatannens v, Tyrrell* 268 Va. 360, 601, S E. 2d 616 (2004) defines the defense of permissive use

[19] Mrs Agnew retired from the practice of law in 1999

court.

Mrs. Agnew read the *Quatannens* case and obtained an opinion from her attorney.[20] After he obtained a copy of the original 1978 Sussex Condominium Plat from the Sussex tenant, he advised that Jeff Rawn clearly knew that the wooden fence was on the Bass parcel; and that if Bass had seen the Plat, he would not have agreed that the wooden fence was the property line. "It is likely that either Bass was mistaken or was tricked. Rawn's successor in title should not profit from the mistake (mistake by Bass) or trick."

Hoping to persuade the new tenant that the matter must be settled, in mid-September, Agnew sent him a Memo detailing the history of the Wall dispute to date and settlement options that she and Rawn had discussed with the City. Later, she gave him a drawing showing how joint landscaping would enhance both properties. In mid-October, Parker advised Agnew by email that the new tenant formally represented the Sussex.

**1. Walter Bass makes a Statement: the Wall was jointly built and paid for 50/50 by both apartment owners.**

In November, Mrs. Agnew sent Bass copies of both the 1978 Sussex plat and her own. He prepared an attested *Statement*[21] describing his agreement with Rawn when they built the Wall together.

> "Jeff approached me to enlist my cooperation in order to build a brick wall in the back yard on the boundary between my property (the

[20] Opinion, William L. Jeffries, Jr., Kane, Jeffries, Cooper & Janis LLP full text App p. 28.

[21] Bass *Statement*, 11/2008, App p. 18

> Gloucester) and his (the Sussex). We discussed the design and cost of the brick wall. I agreed to pay a portion of it."

He expressed his surprise and dismay at Rawn's trick:

> "I did not know until I recently received a copy of the survey plat of the Gloucester property and a copy of the [1978] survey plat...which... converted the Sussex to condominiums, that the brick wall was not built on the mutual boundary....[I]nstead, it was built entirely on the land of the Gloucester,..my property at that time...a complete surprise to me."
>
> He stated that Rawn had deceived him when he marked the place where the wall would be built, "I presumed that...the brick wall was to be built on our mutual boundary...." " I asked if he knew where the property line was located. He...marked the spot and insisted that was where it should be built [and] I assumed that he knew what he was doing...." Bass concluded that "it obvious that the wall belongs to Mrs. Agnew since it is completely located on her property."

In December, the newly-minted Sussex Condominium Unit Owners Association filed a Verified Complaint against Mrs. Agnew in four counts of adverse possession and trespass, signed by Parker. Counsel of record was an associate of the new Sussex' tenant.[22]

**2. Mrs. Agnew's Answer: construction of the wall was a permitted use, built and paid for by both abutting property owners.**

[22] Joshua Heslinga filed *The Sussex Condominium Unit Owners' Association v Marian K Agnew and the Marian K Agnew Revocable Trust*, Circuit Court of the City of Richmond, No. CL0-8005626

Mrs. Agnew disputed the alleged mistake, answering that Rawn had obtained Bass' permission and then tricked him; and that the Brick Wall was a joint effort between neighbors. She attached Rawn's 2002 letter, a copy of her Plat and Bass' attested Statement. She asserted that the Complaint was "not well grounded in fact and not warranted by existing law"[23], and brought for improper purposes of converting her property, harassment and unnecessary delay in completing renovation of her garden.

During spring, 2009, litigation progressed. The Sussex threatened sanctions Against Mrs. Agnew if she did not sign prejudicial Stipulations as to the facts. She refused and shut off their email.

**D. Agnew's surveyor corroborates Bass' Statement that Rawn intended to trick him.**

In April, 2009, Agnew contacted John Lester[24], the surveyor Rawn had hired to draw the 1978 Sussex Plat. Lester produced not only his original survey but also the original Field Notes.[25] His Affidavit[26] reveals that Rawn's 2002 letter[27] had intentionally misrepresented the location of the "decaying wooden fence." Lester's Notes also show that the "dilapidated" wooden fence was actually located 4.5 feet inside the Sussex property line, completely surrounding its garden. His Plat[28] also shows the line of an old wire fence located on the

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[23] Va. Code 8 01-271.1.

[24] hereinafter "Lester"

[25] App p 24 Field notes are the actual measurements taken on site from which the Plat is drawn

[26] Statement of John Lester and attached notes App. p 20.

[27] App p 15.

[28] App p 25

Gloucester property. Still there, it had also been drawn on a 1912 plat. This is the exact location of the inside (Sussex) face of the Brick Wall that extends its width, an additional foot, into Mrs. Agnew's property.

Lester also had saved Rawn's instructions proving that Rawn told him to draw the "Brick Fence, (to be completed)" on the property line. Lester then drew the Condominium Plat and gave it to Rawn. Rawn then built the Brick wall built on the wire fence line on Bass' property, not on the property line. A year later, Rawn filed the deceptive Plat with his Condominium Declarations. He thereby violated the criminal penalty provisions of the *1974 Virginia Condominium Act.*[29] None of Rawn's successors, including current Sussex tenants, knew that the Brick Wall that surrounded their garden was located on their neighbor's property because the plats they were given when they purchased their Units were fraudulent.

**1. Bass revised his Statement.**

In May, 2009, after Agnew sent Lester's Statement and notes to Bass, he finally understood exactly how Rawn had tricked him, and revised it.[30] Even though Rawn had insisted that he knew where that boundary was located, he did not show Bass the Sussex Condo plat:

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[29] Va Condominium Act § 55-79.103. Penalties. Any person who ... willfully in an application for registration makes any untrue statement of a material fact or omits to state a material fact shall be guilty of a misdemeanor and may be fined not less than $1,000 or double the amount of gain from the transaction, whichever is the larger but not more than $50,000, or he may be imprisoned for not more than 6 months; or both, for each offense.

[30] Bass Revised Statement, App p 29

> "It clearly shows the property line and the proposed location of the brick wall on the mutual boundary. It also shows a fence on my property near the eastern boundary." He added, "If Jeff had shown me the plat, I would have been comfortable with the plans because it shows 'a Brick Fence (not yet completed)' drawn on the mutual property line, as Jeff had stated when he asked me to pay for half the cost."

Although Bass did not remember the wire fence, probably covered with creeper, he did remember the wooden fence that ran from the rear corner of Rawn's building back toward the alley, probably five feet on the Sussex property that was shown on Lester's Notes. Bass concluded that, "I now understood that the 2001 Plat done for Mrs. Agnew showed that Jeff [Rawn] had the brick wall built in the same location as the eastern wire fence shown on the 1978 plat, not straddling the property line." He expressed his dismay: "I now believe that I had been deceived. At that time, I assumed that Jeff knew the importance of respecting boundary lines since he was a very experienced developer and banker."

**2. Mrs. Agnew gave this information to the Sussex in discovery.**

All of the documents described above were included in Mrs. Agnew's discovery responses, including the Rawn, Bass and Lester Affidavits, supporting her assertion that Bass gave Rawn unconditional permission to build the wall between their gardens and deceived him by refusing to have the property line verified by a survey.

**E. The Sussex' Motion for Summary Judgment, claimed that there were no disputed facts.**

As soon as the Sussex tenant made his appearance, he moved for partial summary judgment. Agnew filed a Motion to Dismiss. He successfully defeated her motions to add the Sussex tenants as necessary party plaintiffs, to compel production of privileged documents and responsive answers to interrogatories, her requests for depositions and quashed her witness *subpoenas deuces tecum*. Agnew objected vigorously. When Agnew filed Notice that she intended to call Lester as an expert witness, the Sussex demurred but did not formally object.

**1. The Pleadings, Motions and Affidavits proved that there were disputed material facts.**

At the October hearing on the Sussex motion, Opposing Counsel argued that *Quatannens* [31] permitted adverse possession by intentional mistake. It claimed that the Sussex had taken Agnew's property because it had owned and possessed it for the statutory period after the Brick Wall was built.

Agnew responded that Lemons, J. had reviewed the entire body of adverse possession law and had ruled *sua sponte* that permissive use at the outset of a trespass is an absolute defense. He had also specifically excluded intentional encroachment, trick, as antecedent, irrelevant and confusing. She stated that surveyor, Lester, would testify that Rawn had intentionally tricked Bass by building the Wall to enlarge his garden after Bass had trusted

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[31] *Quatannens v, Tyrrell*, 268 Va. 360, 601, S.E. 2d 616 (2004)

him to build it on the property line without a survey.

Rawn had also falsified the Wall's location on his condominium plat, thereby violating the criminal penalty provision of the 1974 Va. Condominium Act. She asserted that the contemporaneous facts would expose that fraud to prove not only that Rawn made no mistake, but also intentionally planned to trick Bass.

**2. The Court declined to take Lester's testimony.**

The Court commented that that it was unfamiliar with adverse possession: "In this court, we don't get many issues involving adverse possession. I can probably count on one hand that issue coming up in the many years I've been here." When Agnew called Lester to testify, opposing counsel objected and argued that it was procedurally improper to take testimony. [32] The Court then declined to hear Lester's evidence. However, it accepted Agnew's proffered evidence into the Record, [33] took the matter under advisement and dismissed the hearing.

**F. In its Opinion Letter, the Court failed to mention Mrs. Agnew's permissive use defense, ruled that summary judgment was proper, and awarded Agnew's property to the Sussex by adverse possession as of 1994 (sic).**

More than a month later, the Court's interlocutory Letter Opinion, awarded partial

[32] VSCR Rule 3 20 (Summary Judgment) does not foreclose testimony
[33] Rawn's letter, Affidavits from both Bass and Lester, with field notes, Sussex email traffic searching for attorneys, Richmond City Tax Assessment records are in the Record

summary judgment to the Sussex, ruling that the Brick Wall located in Agnew's garden was acquired by the Sussex through adverse possession in 1994.[34] It concluded that Rawn had been mistaken as to the location of the boundary line and that "any fraud that may have been involved was induced by a unilateral mistake."

It did not acknowledge Agnew's defense clearly shown in the Affidavits of both Bass and Rawn and substantiated by surveyor Lester: that the Brick Wall was built between the gardens of two apartment owners with permission of both parties and permissive use is an absolute defense to adverse possession.

The Interim Order[35] ruled that the fifteen-year Virginia Statute of Limitations had given possession of Gloucester property to the Sussex as of 1994 and that the case would go to trial only on the amount of damages Mrs. Agnew would pay for her trespass. Mrs. Agnew's Objections were overruled and her Motion to Reconsider was denied. Mrs. Agnew was finally permitted to take Rawn's deposition but only on the trespass issues.

**G. By its pre-emptive pre-trial Order, sustaining the Sussex Motions, the Circuit Court virtually eliminated Mrs. Agnew's right to further due process: evidence showing that she could not and had not trespassed on her own property.**

The Circuit Court's January 30, 2009, Order After Pretrial Conference [36] bootstrapped its

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[34] Letter Opinion, 10/21/09, App A, p 4 The 1994 date is incorrect; the statute tolled in 1993

[35] Order, 11/12/09, App. A, p 8

[36] Record 364-366.

November 3, 2008, interim ruling (that the Sussex had confiscated Agnew's property by 1994) to limit Agnew's evidence to the issues of trespass and damages. After receiving Mrs. Agnew's ten-page witness and Exhibit List, (Record, 397-403) the Sussex immediately moved *in Limine* to exclude nearly all of it, but most particularly testimony from surveyor Lester, as irrelevant and improper. Mrs. Agnew opposed and objected [37] that by virtually eliminating all her proffered evidence that would have proved her innocence, the court had denied her due process.

> "Mrs. Agnew hereby opposes and objects to further Sussex efforts to violate her right to due process by preventing introduction of truthful evidence conclusively showing that Agnew cannot and has not trespassed on her own property. Agnew asserts that she neither trespassed nor damaged Sussex property when she demolished part of an offensive brick structure deliberately built in 1978 on her predecessor's property and continuing in violation of the criminal provisions of the Virginia Condominium Act, § 55-79.103.

**H. Mrs. Agnew objected that the Court's November 30, 2009, pre-trial Order After Pretrial Conference, [38] was not based upon good law, the presumption in its Interim Order that the Sussex had confiscated Agnew's property by 1994.**

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[37] Full text, App p. 32 Defendants Opposition to Plaintiff's Motion in Limine, Defendant's Objection to Plaintiff's Motion in Limine Record 433-441.

[38] Record 364-366

By sustaining Sussex' Motions, bootstrapping the interim Opinion's presumption that the Sussex had confiscated Agnew's property by 1994 (sic), the Court limited Agnew's evidence to the issues of trespass and damages. The Court therefore virtually pre-empted Mrs. Agnew's right to further due process: it eliminated any chance she might have had to prove that she could not and had not trespassed on her own property.

**1. Orders entered under VSCR Rule 1:13 denied Mrs. Agnew due process.**

Under Rule 1:13, the Court has used its discretion unilaterally to file its Orders. By waiving Mrs. Agnew's right to enunciate her objections, exceptions and endorsements, it has demonstrated the Court's *per se* violation of her right to due process.

**2. The Sussex moved *in limine* to exclude testimony from surveyor Lester, as irrelevant and improper.**

After receiving Mrs. Agnew's ten-page witness and Exhibit List, (Record, 397-403) the Sussex immediately moved *in Limine* to exclude nearly all of it, but most particularly testimony from surveyor Lester, as irrelevant and improper. Mrs. Agnew opposed and objected[39] that by virtually eliminating all her proffered evidence that would have proved her innocence, the court had denied her due process.

> " Mrs. Agnew hereby opposes and objects to further Sussex efforts to violate her right to due process by preventing introduction of truthful

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[39] Full text, Appendix C, Defendants Objection to Plaintiff's Motion in Limine,

evidence conclusively showing that Agnew cannot and has not trespassed on her own property. Agnew asserts that she neither trespassed nor damaged Sussex property when she demolished part of an offensive brick structure deliberately built in 1978 on her predecessor's property and continuing in violation of the criminal provisions of the Virginia Condominium Act, § 55-79.103."

**I. Mrs. Agnew's trial was limited to trespass and damages. The Court ordered her to pay more than $5,000 to reconstruct the Brick Wall.**

Surveyor Lester was again present and prepared to testify. After Opposing Counsel objected that his testimony would be irrelevant to the trespass issues remaining, the Court again refused to hear him. Sussex President Parker testified that the Sussex had never disputed that the wall was on Agnew's property and had never accused her of trespass. The index to Rawn's deposition substantiated that fact because the work "trespass" was never mentioned. Rawn admitted his extensive development experience, that he was familiar with surveys and knew how to read a plat. He excused his "mistake" by stating that similar encroachments were common in that historic area of Richmond.

The Court ruled that Mrs. Agnew had become an unintended trespasser when she demolished part of the Brick Wall and awarded the Sussex $5,095 in damages, $1,000 more than her estimate to replace the Wall. After the Final Order was entered, Mrs. Agnew filed Notice of Appeal. The Court refused to sign her Statement of Facts submitted with her Petition in violation of Supreme Court Rules and she objected again.

On September 9, 2010, the Virginia Supreme Court denied Mrs. Agnew's Petition for Certiorari that challenged both lower court decisions on grounds that the *Quatannens* permission analysis was not followed and that there is no Virginia precedent for adverse possession originating in intentional trick or fraud. Her Petition for Rehearing, denied on November 15, 2010, asserted that she had been denied constitutional due process when the Circuit Court summarily awarded adverse possession of her property to the Sussex without taking her factual evidence.

**J. Mrs. Agnew noticed her intent to appeal to the U.S. Supreme Court at the January 18, 2011, hearing on the Sussex' Motion for Sanctions.**

**1. Richmond City Tax Records prove that opposing counsel had a personal pecuniary interest in this case.**

Back again in Circuit Court, Opposing Counsel moved to sanction Mrs. Agnew $20,000 for his Attorney fees and to release funds Mrs. Agnew had posted to pay for damages to restore the Brick Wall. She responded that he had already personally profited simply by filing this case. His apartment assessment had increased approximately $169,000 when the defect of probable litigation was eliminated by settling the Brick Wall boundary issue. [40] When she moved his City Tax Assessment Records into Evidence, they were admitted.

Exhibit No.1,[41] in the is a certified copy of the

[40] See, Transcript, Hearing *Sussex Motion for Satisfaction of Judgment*, 01/18/11, p. 17-20.

[41] Filed with the envelope of Defendant's Exhibits in the Record

Richmond City Tax Assessment Record for opposing counsel's apartment, showing that it had been assessed at $419,000, although vacant for more than a year. In September, 2008, he purchased it for only $250,000, a 40% discount.[42] After Mrs. Agnew and the Judge examined Exhibit No. 1, it was admitted into evidence (Transcript 1-18-2011, pp.17, 18):

> Mrs. Agnew: ...[T]his is what he paid for it,..$250,000.... [T]he assessment in 2008 was $419,000, but he got it for $250,000. Then he went to the City and asked them to reduce the tax assessment because of the problem in the back yard, and they knocked it off $100,000 ...back to $318,000....[A]ll of a sudden, [this] case became a very lucrative thing for (Opposing Counsel). $170,000 was added to the value of his property when he filed it and maybe that is why this case appeared when it did."
>
> The Court: I see.
>
> Mrs. Agnew: Okay, I am submitting that.
>
> The Court: All right.
>
> Mrs. Agnew: I move that into evidence.
>
> The Court: All right.
>
> Mrs. Agnew: You asked me what happened.
>
> The Court: Well, I did.

**2. Mrs. Agnew was sanctioned $200.**

After the Court Admitted the City Tax Assessment Records into evidence, it sanctioned Mrs. Agnew $200 for wasting opposing counsel's valuable time. She has paid both the damages and

[42] See Certified Richmond City Tax Records, App. C p.39

sanction.

## REASONS FOR GRANTING THE PETITION

**A.** This case presents a perfect storm of fact and law to adjudicate whether state Statutes of Limitations for adverse possession, conveying possession of paper-titled property to a trespasser at a time certain without the fair hearing required by procedural due process, have been unconstitutional since the 14th Amendment was enacted to protect civil rights in "life, liberty and property," from state action.

### 1. The Virginia Statute of Limitation:[43] how it conveyed possession of Mrs. Agnew's Brick Wall to the Sussex.

The Virginia Statute of Limitations for Adverse Possession is fifteen years. It designates a period deemed sufficient to settle ownership of property, regardless of recorded title, on the occupant who has been in open and continuous possession for that period of time. After it terminates, the paper title owner may not eject the trespasser.

The case at bar started in 1978 with a misdemeanor: a misrepresentation on the Sussex Condominium Plat of the prospective location of the "Brick Fence" on the Gloucester/ Sussex property line. It ended when the Court awarded possession of that same Brick Wall to the Sussex as of 1994 (sic), years before Mrs. Agnew purchased her property. The enabling statute connects these two events. The

[43] § 8.01-236. "No person shall make an entry on, or bring an action to recover, any land unless within fifteen years next after the time at which the right to make such entry or bring such action shall have first accrued to such person or to some other person through whom he claims...."

issue here is whether its mechanical operation violated Agnew's constitutionally protected right to procedural due process and equal protection under the 14th Amendment.

During the statutory period, the owner of record, Bass, could have ejected the Sussex had he known that when he gave Rawn permission to build the Brick Wall in 1978, Rawn was knowingly planning to locate it completely on his property. After the fifteen-year Statute had run, he no longer had that option. Years later, when he sold his property to Mrs. Agnew and she discovered the trespass, it was too late to eject the Sussex.

The Court ruled that when Rawn deliberately built the Wall on Bass' property, the Statute dispossessed Mrs. Agnew by 1994 (sic), fifteen years later, and nothing more was needed to vest the Sussex' claim to her property. Her property rights and those of the Sussex had been reversed and when she demolished part of the Wall in 2008, she trespassed and was liable for damages.

**2. If the Statutes of Limitation for adverse possession violate constitutionally protected property rights, why are they still used to resolve disputed ownership of property?**

In 1225, when his Barons exacted the promise from King John that no person would be stripped of his rights or possessions "except by the lawful judgment of his equals or the law of the land," procedural due process was enacted. When the English covenants[44] for protection of property and substantive civil rights were codified by the

founding fathers in the Constitution, the equally ancient notion of land ownership by possession, adverse possession and its Statutes of Limitation, also became part of property law in every state. The fact that the Statutes provided no procedural due process has remained unnoticed, hidden in plain view ever since because they were a cheap and practical way to resolve property disputes when there were few people and common land was plentiful. Many U.S titles originate in adverse possession. This case demonstrates that little has changed since the 18th Century: In Virginia a trespassing neighbor can still oust a legitimate owner by adverse possession when the fifteen-year Statute of Limitation prohibiting "entry upon land" ended.

**3. Since adverse possession compromises regularity in conveyance, its unconstitutional enabling statutes must be declared invalid under the 14th Amendment.**

Today, unoccupied common land is rapidly disappearing and possessory rights no longer serve their original purpose: a quick way to assign ownership to a possessor of property. Squatter's rights have become the vehicle for scavenging paper-titled property and what a property owner bought is not always what he got, so long as the Statutes are lawful. Increasingly sophisticated technology, GPS locators, computerized surveying equipment and microfiche records in the local courts have defined land ownership to within tenths of inches on paper, the plat. Conflicts arise when its accurate depiction is not staked out on the property. Where there are discrepancies, the paper

title/possession issue immediately becomes a dispute that adverse possession can no longer solve.

**B.** The Federal question here is whether the ancient possessory ownership doctrine of adverse possession has finally hit the Fourteenth Amendment Brick Wall that provides due process and equal protection for persons and their property from state power.

**1. The ancient law of possession has conflicted with constitutional mandates for due process and equal protection s ince the Fourteenth Amendment was ratified.**

Substantive due prccess, the principle that government must respect all legal rights owed to a person, originated in England's *Magna Carta,* in 1225. The right to private possession of land also originated in England when the *1275 Statute of Westminister* was enacted fifty years later. It substantively embraced the notion that serfs who fenced and labored on their own land were more productive. Livery of seisin, or conveyance of ownership, was a ceremony that occurred when the feudal landlord gave his tenant a piece of turf, a twig and sometimes a key.

Ownership of land by possession, predated modern conveyance practice for good reason: it was reasonably reliable: "What you saw was what you got." Property was well identified when its possessor had occupied and improved it by his labor, had been vigilant and had driven off encroachers. In 1662, the Virginia Assembly instituted the old English practice of requiring parish church wardens to assemble the landowners every fourth year to perambulate their property lines, renewing marks

by individual and collective memory.[45]

**2.Paper title gradually replaced possession.**

The necessity for agrarian possession, enunciated by John Locke, was later imported by Thomas Jefferson[46] to settle this country when there was a huge surplus of state-owned land originating in grants.[47] However, when possession alone became increasingly unreliable, i.e., grants were vague, boundaries marked by watercourses, house ruins, and trees were indistinct, a better way to notice ownership had to be found. Property lines were surveyed by pulling chains through the woods and measuring angles by hand compasses.[48] As a result, by the mid-nineteenth Century, the paper trail based on surveys recorded on Cadastral Maps,[49] title searches, deeds, and plats gradually became both the common and preferable method of public conveyance (tracing) and establishment of land ownership. However, possession still operated concurrently with paper where there were still vast tracts of unoccupied land underutilized and available for the taking.

Three hundred years later, population has grown, land values have appreciated and pressure

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[45] Brent Tartar, *Bacon's Rebellion, the Grievances of the People, and the Political Culture of Seventeenth Century Virginia* Virginia Magazine, Vol 119, No 1, p 2.The Virginia Historical Society,

[46] Jefferson urged deeding 50 acres of land to "every adult head of household" to avoid land speculation He was not successful.

[47] Mark Sturges, Enclosing the Commons Thomas Jefferson, Agrarian Independence, and Early American land Policy, Virginia Magazine, Vol 119, No 1, The Virginia Historical Society.

[48] Both George Washington and Thomas Jefferson were surveyors as were their fathers

[49] A Cadastral Map shows the boundaries and ownership of properties They have been used by local government both in the U.S. and Europe for identification and tax purposes since the mid 19th Cent

for possession of land has increased, particularly in urban areas. Computer driven surveys, laser and infra-red measurements based on GPS grids,[50] and recorded on those same Cadastral Tax Maps, have made paper titles accurate to within hundredths of feet. Inchoate adverse possession claims stemming from both inaccurate land surveys and trespassing neighbors, will arise ever more frequently when a purchaser discovers that his paper title does not reflect the fact that his predecessors had failed to pay scrupulous attention to trespassers' encroachments on the property he bought.

### 3. Adverse possession (squatters' rights) now substantively threatens the presumption of regularity in modern land transactions.

"*THE LAST GREAT REAL ESTATE SECRET:* **ADVERSE POSSESSION - IT'S AMAZING! Get Real Estate for Pennies on the Dollar Through Adverse Possession!" - NO TRICKS, NO SCAMS - IT'S THE LAW.** Amazon.com. $39.95.

This "do-it-yourself" paperback provides step-by-step directions for a land speculator to dispossess an unsuspecting property owner without notice or a fair hearing. Still lawful, adverse possession has become the counterintuitive, substantively unjust way to acquire property without recrimination. Once economically pragmatic, it is an unconstitutional anachronism that violates all notions of fundamental fairness, no longer the cheap and easy way to avoid prolonged litigation.

There can be no proper and predictable real property conveyance when property purchased

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[50] The North American Datum, 1983, grid is overseen by the National Geodetic Survey. Each state also has its own grid

today may have been adversely possessed out of the buyer's predecessors years earlier completely without his knowledge, leaving no notice on his title. Surveys and plats come too late to do more than verify the encroachment that has compromised the legitimate purchaser's contracts and covenants for quiet enjoyment that both substantive and procedural constitutional due process and equal protection are supposed to provide.

**4. Adverse possession is the "*Cirque du Soleil*" of real property law; its high-wire act of conflicting vague and ambiguous precedents befuddles attorneys, confuses courts, and baffles law students and property owners.**

Appellate courts have struggled to reconcile irreconcilable differences between adverse possession opinions when they attempt to applying vague criteria to alleged facts as to how the initial trespass occurred.

Time limits arbitrarily vary from state to state and within the statutes themselves. In Alaska,[51] for example, the Court considered whether a claim of right matured within seven years or a mistaken claim in ten. Subjective definitions of both "claim of right" and "mistake" also vary from case to case. In Minnesota,[52] the Court ruled that a tax paying trespasser took the land in five years, but the ten year Statute applied to a mistake with a claim of right.

In Alabama, the court examined whether possession was statutory or prescriptive.[53] In some

[51] Alaska Stat. 09.45.052

[52] *Ehle v. Prosser*, 197 N.W.2d 458 (1972)

[53] *Kerlin v Tensaw Land & Timber*, 390 So 2d 616(1980)

states, possession is a subjective matter; in others, like Virginia, procedural. When ownership and possession are argued, i.e. claim of right (variously described as adverse or "hostile," exclusive and continuous ownership (but non-exclusively and non-continuously "tacked" to some, but not all, predecessors) open, notorious use for a statutory period, opinions wobble in every direction. Was the trespass permitted or adversely hostile enough; and if so by intent or mistake? How does one prove a "good faith" or "mistaken" belief? A mystifying New Jersey opinion [54] examined both the "Maine doctrine" and conflicting Connecticut law, investing huge amounts of time, ink and paper to adjudicate the ownership of two concrete steps and a walkway as to the hostility needed to award adverse possession.

Courts struggle with what a 'good faith" claim is supposed to mean. In Washington State, the answer is nothing. The Supreme Court overruled 47 cases back to 1895 to hold: "Washington is not the only state which looks to the subjective belief and intent of the adverse claimant in determining hostility. *See, e.g.*, *Ellis v. Jansing*, 620 S.W.2d 569 (Tex. 1981); *Van Valkenburgh v. Lutz*, 304 N.Y. 95, 106 N.E.2d 28 (1952); *see generally* 3 *American Law of Property* § 15.4 (A. Casner ed. 1952). However, the requirement has been regarded as unnecessarily confusing by many legal commentators, *see* Dockray, Adverse possession and *Intention — I*, 1981-82 Conv. & Prop. Law. (n.s.) 256; C. Callahan; Stoebuck, 35 Wash. L. Rev. at 76-80; and A. Casner; and has been abandoned by the apparent majority of states. 3 *American Law of Property* § 15.5, at 785.

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[54] *Mannillo v Gorski*, 54 N.J 378, 255 A.2d 29 (1969)

"For these reasons, we are convinced that the dual requirement that the claimant take possession in "good faith" and not recognize another's superior interest does not serve the purpose of the adverse possession doctrine. *See* Dunbar *v. Heinrich*, 95 Wn.2d 20, 622 P.2d 812 (1980); *Wickert v. Thompson*, 28 Wn. App. 516, 624 P.2d 747 (1981). The "hostility/claim of right" element of adverse possession requires only that the claimant treat the land as his own as against the world throughout the statutory period. The nature of his possession will be determined solely on the basis of the manner in which he treats the property. His subjective belief regarding his true interest in the land and his intent to dispossess or not dispossess another is irrelevant to this determination. Under this analysis, permission to occupy the land, given by the true title owner to the claimant or his predecessors in interest, will still operate to negate the element of hostility. *Chaplin v. Sanders*, 100 Wn. 2d 853, 676 P.2d 431 (1984)."

In 1989, the Oregon legislature, decided to resolve the "good faith" problem by adding a stringent and detailed belief-in-ownership element to the law. Of the few states that require good faith claims, Oregon now enforces the most rigorous of standards. Section 105.620 of the Oregon Code explains the elements necessary to assert a claim of adverse possession, as well as the necessity of satisfying the statute of limitations. Oregon's belief-in-ownership requirement goes beyond mere absence of fraud. The Statute demands that the belief exists at entry and continues through the statutory period. The belief must have an "objective basis" and be "reasonable under the circumstances." In this departure from established adverse

possession law, the motivation of the Oregon legislature seemed clear: the legislature believed the time had come to "restore" a good faith element that had been "interpreted away" by the courts. As a result, no adverse possession claim filed after the statute's effective date, January 1, 1990, has proceeded to the appellate courts.[55]

North Carolina also recognizes only those real-property claims that have been recorded.[56]

In 2006 New York finally enacted legislation changing the statutory standard for adverse possession in New York, generally following the Oregon notion. People got naturally upset when attorneys, like Walling, were bringing *pro se* cases against their neighbors. *Walling v. Przybylo*, 851 N.E.2d 1167,7 N.Y.3d 228, 818 N.Y.S.2d 816 (2006). According to Senator Little's memorandum,

> "This legislation is all about good faith. A person who attempts to possess land that they know all too well does not belong to them should not be encouraged. If a person desires land, they can buy it. However, if they have a reasonable basis to believe that it is their land then that is exactly the good faith dispute over title to real property for which the adverse possession doctrine was established. Adverse possession should be used to settle good faith disputes over who owns land. It should not be a doctrine which can be used offensively to deprive a landowner of their real property. That only encourages mischief between neighbors and even between families. No good can come of it. This is an incentive

[55]Per C. Olson, Adverse possession in Oregon: the belief-in-ownership requirement,

[56] N C Gen. Stat § 47-18(a)

which must be curtailed."

Curtailed, perhaps - cured, never. Legislation is a band-aid on a cancer because the territorial imperative/greed motive can never have a "reasonable basis." Here, "the good faith dispute over title to real property for which the adverse possession doctrine was established," has become simply theft.

Law, like nature, abhors a vacuum. When the state Statutes of Limitation are declared void by this Court, it is inevitable that constitutional alternatives will be enacted in due course to replace adverse possession.

**5. Less drastic means must be found to resolve property disputes and stop "squatter's theft," the mischief caused by statutes of limitation for adverse possession.**

The notion that property rights disputes are still decided by the ancient "possession trumps all," notion of theft by squatting, adverse possession and its unconstitutional confiscatory Statutes is unbelievable to most people. This case demonstrates an immediate need to find a fair and reasonable alternative. For example, although liability for property taxes that Bass and Mrs. Agnew have paid on the land used by the Sussex since 1978 are minimal, a trespasser's tax liability on hundreds or thousands of acres would be huge. Although the brutal act of depriving Mrs. Agnew of the use and enjoyment of her garden is unquantifiable, it has been real enough for her to vigorously defend it. The increasing value and scarcity of land in developing areas, has made obsolete the presumption that possession, now adverse

possession, is the only way to resolve conflict between property owners.

So this case is not only about brick walls, greedy tricky neighbors or even dodgy lawyers making a quick profit on the side. It really concerns the Statutes of limitations that enable the tricking, dodging and profiteering that have become dark side of property law: theft by statute. This case proves that adverse possession can still lawfully swoop down on the unsuspecting land owner who "thought he got what he bought," and snatch it.

The founding fathers gave The Supreme Court jurisdiction to stop exactly this kind of substantively unconstitutional state action in both the Bill of Rights and later the 14th Amendment. Therefore by declaring all state Statutes of Limitation for adverse possession an unconstitutional taking of real property without substantive due process and equal protection, the Court will have served notice on legitimate property owners that, after seven-hundred years, the circus has finally left town.

C. This case of first impression, holding that intentional fraud is grounds for permitting adverse possession, substantially departs from established Virginia case law. The Virginia Supreme Court's failure to reverse the Circuit Court's interim summary judgment violates its own procedural rule 3.20.[57] The rulings below also violate Mrs. Agnew's right to due process; and set a precarious precedent for resolution of property rights disputes.

**1. The facts were disputed.**

The Virginia Supreme Court's failure to reverse

[57] VSCR Rule 3.20. "Summary judgment shall not be entered if any material fact is genuinely in dispute."

the Circuit Court's interim summary judgment violated its own procedural rule, VSCR 3.20. The only fact not disputed here is that Bass paid half the cost to build the Brick Wall. Otherwise, all of Mrs. Agnew's proffered evidence conflicted with Sussex' claims that Rawn's serial misrepresentations proved his mistaken belief that he was building the Brick Wall on the common boundary. Her proffered evidence, proved by the facts, *supra*, shows that Rawn planned to obtain Bass' permission to build the Brick Wall, to fence his property with it and to permanently acquire both the Wall and Bass' property by operation of the Statute of Limitations for adverse possession.

Bass'Affidavits dispute Rawn's Letter and Memo. The Notes proffered with Agnew's surveyor's Affidavit dispute Rawn's claim that the "dilapidated," wooden fence was on property line when it was actually located approximately 4.5 feet inside his Sussex property.

The fact that Rawn deliberately told Lester to draw the "Brick Fence (to be constructed)" on the Sussex Plat property line disputes his claim that his cover up was a mistake. The fact that Rawn failed to show Bass the false Plat also disputes Rawn's contention that his mistake was unpremeditated and not carefully planned to avoid the surveyor.

A fair hearing determines whether evidence supporting the legitimacy of the adverse possessor's claim is sufficient. Without taking that evidence, the Circuit Court's grant of summary judgment in favor of the Sussex is a State action in violation of Mrs. Agnew's civil right to due process and equal protection provided by Sec. 1 of the 14th Amendment to the

U.S. Constitution.

**2. The ruling violates Virginia precedent.**

The lower court Opinion, holding that a recent Alexandria, Va. case, *Quatannens v. Tyrrell,* 268 Va. 360, 601 S.E. 2d 616 (2004), added intentional trick or fraud to the "mistake" criteria for adverse possession, is a substantial departure from previous Virginia case law. The issue of intentional trespass was not raised in the *Quatannens* main case and there are no Virginia cases supporting that notion. In fact, *Quatannens* specifically excludes intentional trespass as a motive for adverse possession. Lemons, J. specifically exempted intentional trespass *sua sponte* in *dictum.* "Eileen Quatannens testified that the Quatannens had not intended to possess any property that they did not own." *Quatannens v. Tyrrell,* 601 S.E.2d 616, 268 Va. 360, at 618. He said, "The collateral question, whether the possessor would have claimed title, claimed the land as his own, had he believed the land involved did not belong to him, but to another, that is, had he not been mistaken as to the true boundary line called for in his chain of title, is not the proximate but an antecedent question, which is irrelevant and serves only to confuse ideas." *(emphasis added) Id.,* S.E.2d at 619. The Sussex argued exactly the opposite and the Court ruled in its favor.

Although the facts in an adverse possession case are usually lost in the sands of time, here they are in the Record. Proffered Affidavits, especially the 1978 contemporaneous Field Notes of surveyor Lester, [58] prove that the Sussex intent to annex Bass' property was planned at the time of the original condominium survey and made clearly

[58] Lester Affidavit and field notes Rawn and Bass Affidavits App C pp. 15-27

evident when Rawn built the Brick Wall on Bass' property. Therefore, when the Circuit Court ruled that the, "any fraud that may have been involved was induced by a unilateral mistake," (citing *Quatannens*), it added trick, deceit and fraud as indices of mistake to Virginia law. By comingling intentional and unintentional trespass, this ruling not only reverses a precedent, it opens the door for unscrupulous theft of property.

### 3. Mrs. Agnew's defense of permissive use was obfuscated by the Sussex mistake argument and not mentioned in the Circuit Court ruling.

"Permission is properly viewed as a defense to a claim of adverse possession. As such, the defendant to the claim has the burden of proof."[59] Before the *Quatannens* case, Virginia courts had not examined the defense of permissive use at the outset of the trespass thoroughly, although decisions in former cases, *Kim v. Douval* Corp. 259 Va. 752, 529 S.E.2d 92 (2000), *Mary Moody Northen v. Bailey* 244 Va. at 121, 418 S.E.2d 882 (1994), had raised the issue. In *Quatannens*, it was not even pleaded. Apparently frustrated, Justice Lemons finally raised it *sua sponte* to provide logical analysis for clarification. The lower court ignored Mrs. Agnew when she quoted the case, and ruled that her property was taken eight years before she bought it even though both parties had given permission to build the Brick Wall. It failed to mention her proof of permissive use and reliance on the *Quatannens* defense analysis in its Orders.

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[59] *Quattannens*, Id. 601 S.E.623

**4. The Ruling Presents a Precarious Precedent for Resolution of Property Rights Disputes.**

The Sussex justified Rawn's trespass by "mistake" by claiming that misplaced property lines are common throughout Richmond's historic Fan District and that to rule otherwise would cause much litigation when they are discovered. That fact is not disputed. However, the lower court opinion has now opened the door to mischief, facilitating that notion by holding that a trespasser or his predecessor who intentionally trespassed for the statutory period, need only go to court and the Statute of Limitations for adverse possession will routinely convey possession of the trespassed property to him.

This case proves conclusively that the Statute has already put at risk proper conveyance and traditional notions of land ownership and exacerbated that risk by adding intentional trick or fraud to the rationale for adverse possession. Predictably, there will be as many property line disputes as there are misplaced property lines, probably thousands already vulnerable since case law provides the original trespass to be "tacked" to the property of predecessors.

By adding fraudulent trickery to the miasma of already baffling qualifications for adverse possession, the Virginia Courts have created a monster of neighborhood dissention and hostility -- not a cheap and quick way to settle boundary disputes, the usual rationale for adverse possession. The disputed facts in this case do not limit it to the shoot-out on Park Avenue between the Sussex and

Gloucester that has been ongoing for six years. Too many properties in Virginia have the potential to distort or mirror its facts, as Sussex mirrors *Quatannens*.

## CONCLUSION

Your Petitioner respectfully requests that the U.S. Supreme Court declare that § 8.01-236, of the Virginia Code, its Statute of Limitation for adverse possession, is unconstitutional because it violates both substantive and procedural due process and equal protection for property within the mandate of the 14th Amendment to the Constitution of the United States.